

EXHIBIT O

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF HAWAII

3
4 WAYNE BERRY, a Hawaii CIVIL NO. CV03-00385 SOM LEK
citizen, (Copyright)

5 Plaintiff,

6 vs.

7 HAWAIIAN EXPRESS SERVICE,
8 INC., a California corporation, VOLUME II
et al.,

9 Defendants.

10
11 VIDEOTAPED

12 DEPOSITION OF WAYNE BERRY

13
14 Taken on behalf of Defendants,

15 at the Law Offices of Kobayashi, Sugita & Goda,
16 Suite 2600, 999 Bishop Street, Honolulu, Hawaii,

17 commencing at 1:11 p.m.,

18 on Thursday, May 19, 2005, pursuant to Notice.

19
20 BEFORE: HEDY COLEMAN, CSR #116, RPR, CRR, CM
21 Notary Public, State of Hawaii
22 Certified Shorthand Reporter

23
24 Ali'i Court Reporting
25 2355 Ala Wai Boulevard, Suite 306
Honolulu, Hawaii 96815

1 APPEARANCES:

2 For the Plaintiff:

3 TIMOTHY J. HOGAN, ESQ.
4 Lynch, Ichida, Thompson & Kim
5 1132 Bishop Street, Suite 1405
6 Honolulu, Hawaii 96813

7 For the Defendant Post-Confirmation Trust:

8 LEX R. SMITH, ESQ.
9 ANNE E. LOPEZ, ESQ.
10 Kobayashi, Sugita & Goda
11 First Hawaiian Center, Suite 2600
12 999 Bishop Street
13 Honolulu, Hawaii 96813

14 and

15 ERIC C. LIEBELER, ESQ.
16 DAMIAN D. CAPOZZOLA, ESQ.
17 Kirkland & Ellis
18 777 South Figueroa Street
19 Los Angeles, California 90017

20 For the Defendants Mark Dillon, Teresa Noa and Brian
21 Christensen, et al:

22 LYLE HOSODA, ESQ.
23 RAINA P.B. MEAD, ESQ.
24 Lyle Hosoda & Associates
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For the Defendants Hawaiian Express Service, Inc.,
H.E.S. Transportation Services, Inc., et al.:

ROY J. TJIOE, ESQ.
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1 For the Defendant Guidance Software, Inc. and Michael
2 Gurzi:

3 REX Y. FUJICHAKU, ESQ.
4 Bronster Crabtree & Hoshibata
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6 1001 Bishop Street
7 Honolulu, Hawaii 96813

8 For Defendant Alix Partners, LLC:

9 GREGORY Y.P. TOM, ESQ.
10 Watanabe Ing Kawashima & Komeiji
11 999 Bishop Street
12 23rd Floor
13 Honolulu, Hawaii 96813

14 Also present: Wayne Berry
15 Martin Walker, Ph.D.

16 Videographer: Robert Whitman
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1 products.

2 Q Did you discuss anything else with the Department
3 of Agriculture, other than the concern about diversions?

4 A No.

5 Q How long ago did you have that communication?

6 A Whenever we had that mad cow was in the news.

7 Q Now, yesterday you mentioned that you have a
8 concern in connection with milk cartons that have Fleming's
9 name on them, and that you had done some investigation
10 relating to that. Do you remember?

11 A Yes.

12 Q Have you contacted the Department of Agriculture
13 or any other entity in connection with the milk labeling
14 that you brought up yesterday?

15 A The Department of Health in Honolulu.

16 Q Okay. So there is a state agency that you have
17 communicated with regarding Fleming, or I guess this would
18 be C&S?

19 A I don't -- I think Fleming -- yeah, you're
20 probably right. The only time Fleming's name was mentioned
21 was the name on the carton. It was more regarding the --
22 the bad milk, and the fact that the shelf life is no good
23 and it all comes over here in one large container. And
24 we're probably the only state where we have double
25 pasteurized milk.

1 Q Okay. So did the Department of Agriculture to
2 your knowledge find any wrongdoing by Fleming or C&S in
3 connection with diversions?

4 MR. HOGAN: Objection; vague as to just -- just
5 Department of Agriculture?

6 MR. SMITH: Correct.

7 A They don't report back to me. I have no
8 knowledge.

9 BY MR. SMITH:

10 Q Okay. And did the State of Hawaii Department of
11 Health have any -- come to any conclusions that anybody had
12 acted improperly in connection with the milk cartons that
13 you found with Fleming's name on them? I apologize.

14 Did the Department of Health come to any
15 conclusion that any wrongdoing had been engaged in
16 with respect to the milk cartons that you had found?

17 A They don't report back to me, either. I have no
18 knowledge.

19 Q You have no knowledge of that. Now, you -- your
20 investigation of those milk cartons, you must have bought
21 some of the milk, is that right?

22 A From time to time, yes.

23 Q And then you scanned the package, the label on the
24 carton in order to get an image of it?

25 A I think at one point Mr. Capozzola, didn't you get

1 a copy of the milk?

2 Q That's why I'm asking. So is that what happened,
3 you scanned the milk carton?

4 A I don't know if I personally did it, but, yes, the
5 milk carton was scanned and sent.

6 Q If you didn't, who did that, Mr. Hogan or Mr.
7 Hogan's office?

8 A It may have been, yes.

9 Q Okay. And then you named the file Moo, or was
10 that Mr. Hogan's office?

11 A I think that was a communication between Mr. Hogan
12 and Mr. Capozzola. I don't -- I don't e-mail Mr. Capozzola
13 directly.

14 Q So the file wasn't named Moo until Mr. Hogan sent
15 it to Mr. Capozzola, is that it?

16 A I don't know that. I may have named it. I don't
17 know who named it.

18 Q Okay. Now, we've remembered the State of Hawaii
19 Department of Health and another entity that you've
20 communicate with. Are there any other state agencies that
21 you've communicated with regarding Fleming or its officers
22 or employees?

23 A That's all I can remember.

24 Q Okay. How about C&S Hawaii, have you communicated
25 with -- other than State Department of Health, have you

C E R T I F I C A T E

I, HEDY COLEMAN, CSR, in and for
the State of Hawaii, do hereby certify:

That I was acting as shorthand
reporter in the foregoing matter on the 19th day of
May, 2005;

That the proceedings were taken
down in machine shorthand by me and were thereafter
reduced to typewriting by me; that the foregoing
represents, to the best of my ability, a correct
transcript of the proceedings had in the foregoing
matter;

I further certify that I am not
counsel for any of the parties hereto, nor in any
way interested in the outcome of the cause named in
the caption.

DATED: May 23, 2005

Hedy Coleman

HEDY COLEMAN, CSR #116
Notary Public, State of Hawaii
My commission expires: 9-14-05